

BIL: 4258
 RTN: 354
 ACN: 318
 TYP: General Bill GB
 INB: House
 IND: 20010605
 PSP: Sharpe
 SPO: Sharpe, Wilkins, W.D. Smith and Davenport
 DDN: l:\council\bills\nbd\11862ac01.doc
 DPB: 20020521
 LAD: 20020515
 GOV: U Became law without signature of Governor
 DGA: 20020529
 SUB: DHEC pilot program, innovative environmental approaches; noncommercial propane tanks, over-fill prevention devices not required on

HST:

Body	Date	Action Description	Com	Leg Involved
-----	20020626	Act No. A318		
-----	20020529	Unsigned, became law without signature of Governor		
-----	20020522	Ratified R354		
House	20020521	Concurred in Senate amendment, enrolled for ratification		
Senate	20020515	Amended, read third time, returned to House with amendment		
Senate	20020514	Read second time, notice of general amendments		
Senate	20020509	Committee report: Favorable	13 SMA	
Senate	20020409	Introduced, read first time, referred to Committee	13 SMA	
-----	20020408	Scrivener's error corrected		
House	20020405	Read third time, sent to Senate		
House	20020404	Read second time, unanimous consent for third reading on the next Legislative day		
House	20020403	Committee report: Favorable	20 HANR	
House	20010605	Introduced, read first time, referred to Committee	20 HANR	

Versions of This Bill

Revised on [20020403](#)

Revised on [20020408](#)
Revised on [20020509](#)
Revised on [20020515](#)

TXT:

NOTE: THIS COPY IS A TEMPORARY VERSION. THIS IS NOT THE FINAL VERSION.

(A318, R354, H4258)

AN ACT TO AMEND TITLE 48, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ENVIRONMENTAL PROTECTION AND CONSERVATION BY ADDING CHAPTER 56, SO AS TO AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO ADMINISTER A PILOT PROGRAM WITH UP TO TEN PARTICIPANTS FOR UP TO FIVE YEARS, WITH A POSSIBLE FIVE-YEAR RENEWAL, FOR THE PURPOSE OF TESTING AND EVALUATING INNOVATIVE ENVIRONMENTAL APPROACHES TO ACHIEVE SUPERIOR ENVIRONMENTAL PERFORMANCE NOT OTHERWISE AUTHORIZED UNDER EXISTING LAW, TO REQUIRE PARTICIPANTS TO BE MEMBERS OF THE SOUTH CAROLINA ENVIRONMENTAL EXCELLENCE PROGRAM, TO ESTABLISH PILOT PROGRAM PROCEDURES AND BASIC TERMS OF AGREEMENT BETWEEN THE DEPARTMENT AND PARTICIPANTS, TO REQUIRE PUBLIC NOTICE OF AGREEMENTS BEING CONSIDERED FOR APPROVAL OR REVOCATION, TO AUTHORIZE VARIANCES FROM EXISTING LAW, AND TO REQUIRE PARTICIPANTS TO COMPLY WITH CERTAIN REPORTING AND ENFORCEMENT PROCEDURES; AND TO PROVIDE THAT OVER-FILL PREVENTION DEVICES ARE NOT REQUIRED FOR REFILLING EXISTING NONCOMMERCIAL PROPANE GAS TANKS.

The South Carolina General Assembly finds that:

Whereas, during the last decade, considerable expertise in pollution prevention, environmental management systems, compliance auditing, emissions monitoring and tracking, stakeholder involvement, and other innovative approaches to exceed the requirements of environmental laws and regulations has been developed and implemented in this State; and

Whereas, South Carolina recognizes and rewards superior environmental performance through the South Carolina Environmental Excellence program and recognizes the superior performance of

companies participating in the United States Environmental Protection Agency's regulatory initiatives, including its voluntary environmental leadership program known as the National Environmental Performance Track Program; and

Whereas, substantial opportunities exist to reduce or prevent adverse impacts to the environment through the use of innovative and cost effective environmental approaches not currently authorized under South Carolina law; and

Whereas, there are persons regulated under existing environmental laws who have demonstrated excellence and leadership in environmental management and in exceeding the requirements of environmental laws and regulations through pollution prevention, technology development, natural resource and energy conservation, and other innovative environmental approaches; and

Whereas, the goals of environmental protection will be best served by testing and evaluating the efforts of those persons who are ready to achieve measurable and verifiable pollution reductions that exceed otherwise applicable statutory and regulatory requirements; and

Whereas, a process for testing and evaluating the implementation of innovative environmental approaches on a pilot basis with those persons committed to superior environmental performance should be developed and implemented in South Carolina. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

Innovation in Environmental Approaches

SECTION 1. Title 48 of the 1976 Code is amended by adding:

"CHAPTER 56

Innovation in Environmental Approaches

Section 48-56-10. It is the purpose of this chapter to:

(1) create a voluntary pilot program by which the department may enter into not more than ten cooperative agreements with eligible participants to test and evaluate innovative environmental approaches to achieve superior environmental performance that are not otherwise authorized under existing South Carolina environmental law;

(2) encourage public participation and consensus among interested persons in the development of innovative environmental approaches and in monitoring the environmental performance of participants in the pilot program;

(3) determine whether innovative environmental approaches implemented through the pilot program result in environmental benefits such that changes in existing South Carolina law to allow these approaches are warranted;

(4) ensure that participants in the pilot program are of the highest caliber in environmental leadership and that innovative environmental approaches included in the cooperative agreements as well as any other environmental requirements applicable to the participants will be fully met.

Section 48-56-20. As used in this chapter:

(1) 'Approval' means a permit, license, or other approval issued by the department under South Carolina environmental law.

(2) 'Cooperative agreement' means an agreement entered into under Section 48-56-30.

(3) 'Department' means the South Carolina Department of Health and Environmental Control.

(4) 'Environmental management system' means an organized set of procedures implemented by the owner or operator of a facility that is based on standards issued by the International Organization for Standardization or an alternative management system or program that is acceptable to the South Carolina Environmental Excellence Program and the department and is designed to evaluate the environmental performance of the facility and to achieve measurable or noticeable improvements in that environmental performance through planning and changes in the facility's operations.

(5) 'Facility' means any site, including all buildings, equipment, and structures located on a single parcel or on contiguous parcels that are owned or operated by the same person, a manufacturing or natural resource management operation, or any business or local government activity that is regulated under any provision of South Carolina environmental law.

(6) 'Innovative environmental approaches' means procedures, practices, technologies, or systems that are designed to achieve superior environmental performance when applied by doing one or more of the following:

(a) achieving emissions reductions or reductions in discharges of waste that exceed otherwise applicable statutory and regulatory requirements;

(b) providing for alternative monitoring, testing, recordkeeping, notification, or reporting requirements that reduce the administrative burden on the department or the participant and providing the information needed to ensure compliance with the cooperative agreement and other applicable provisions of South Carolina environmental law; or

(c) achieving natural resource conservation or reductions in the use of natural resources or energy consumption.

(7) 'Interested person' means a person or a representative of a person who, due to his proximity to a facility, is or may be affected by the activities at the facility that is covered or proposed to be covered by a cooperative agreement.

(8) 'Performance evaluation' means a systematic, documented, and objective review, conducted by or on behalf of the owner or operator of a facility, of the environmental operations of the facility, including an evaluation of compliance with the cooperative agreement covering the facility, approvals that are not replaced by the cooperative agreement and the provisions of South Carolina environmental law for which a participant has not been granted a variance.

(9) 'Person' means an individual, corporation, company, association, partnership, unit of local government, state agency, federal agency, or other legal entity.

(10) 'Pollution' means:

(a) the presence in the environment of any substance including, but not limited to, sewage, industrial waste, other waste, air contaminant, or any combination of these in a quantity and of characteristics and duration:

(i) as may cause or tend to cause the environment of the State to be contaminated, unclean, noxious, odorous, impure, or degraded;

(ii) which is or tends to be injurious to human health or welfare;

(iii) which damages property, plant, animal or marine life or use of property; or

(b) the manmade or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(11) 'South Carolina Environmental Excellence Program' means a voluntary program in which facilities are selected for membership based upon their demonstrated commitment to continuous environmental improvement through the use of environmental management systems to achieve pollution prevention and energy and natural resource conservation.

(12) 'South Carolina environmental law' means all state and federal environmental laws and regulations that the department is authorized to administer and enforce.

(13) 'Violation' means a violation of a cooperative agreement, of an approval that is not replaced by the cooperative agreement, or of a provision of South Carolina environmental law for which a participant has not received a variance.

Section 48-56-30. The department is authorized to administer a pilot program under which it may enter into not more than ten cooperative agreements with eligible participants to implement and evaluate the use of innovative environmental approaches. The cooperative agreement shall:

(1) identify the facility, the activities, and the pollutants that are covered by the cooperative agreement;

(2) specify any approvals and provisions of approvals that are replaced by the cooperative agreement;

(3) commit the participant to implement an environmental management system at the covered facility and commit the participant to document performance under the environmental management system;

(4) commit the participant to demonstrated superior environmental performance that exceeds requirements of South Carolina environmental law, to achieve measurable or noticeable improvements in its environmental operations, to reduce natural resource or energy consumption, and to reduce waste generation;

(5) specify waste reduction goals in measurable and verifiable terms;

(6) identify changes in raw materials, approaches of production, distribution or uses of products or in the reuse, recycling, or disposal of materials that the participant will implement to achieve process efficiencies, to reduce the pollution of the air, water, and land and to reduce the use of energy or natural resources or indoor chemical exposure;

(7) contain pollution limits that are measurable, verifiable, enforceable, and at least as stringent as the pollution limits under South Carolina environmental law;

(8) describe the innovative environmental approaches and any variances granted to the participant;

(9) list the requirements that would be included in any approvals that are replaced by the cooperative agreement;

(10) require the participant to submit a performance evaluation within 180 days of the date that the cooperative agreement is effective

and to periodically update the performance evaluation as specified in the cooperative agreement;

(11) require the participant to report any violations discovered during a performance evaluation as required in Section 48-56-130;

(12) ensure that members of the interested persons group, established as required under Section 44-56-60, have the opportunity to review and comment on the participant's draft cooperative agreement and the participant's performance under the cooperative agreement;

(13) require the participant to provide information to the interested persons group and to the public about the participant's environmental performance and the results of the project, including environmental, social, and economic impacts and to meet with the interested persons group at least once every 6 months to discuss the implementation of the participant's cooperative agreement and to receive comments on the progress of the project;

(14) require the participant to assess the success of the project in reducing the time and money spent by the participant on paperwork and other administrative activities that do not directly benefit the environment;

(15) specify that the term of the agreement is up to 5 years with the possibility of one renewal for up to 5 years.

Section 48-56-40. Participation in the pilot program is limited to facilities that are members or are eligible to be members of the South Carolina Environmental Excellence Program and that are issued at least one approval under South Carolina environmental law.

Section 48-56-50. The department may grant a participant a variance from a requirement in South Carolina environmental law that would otherwise apply to a facility covered by a cooperative agreement if the variance does one or more of the following:

(1) achieves measurable emissions reductions or reductions in discharges of waste that exceed otherwise applicable statutory and regulatory requirements through the use of innovative environmental approaches;

(2) provides for alternative monitoring, testing, recordkeeping, notification, or reporting requirements that reduce the administrative burden on the department or the participant and that provides the information needed to ensure compliance with the cooperative agreement and the provisions of South Carolina environmental law for which the cooperative agreement does not grant a variance; or

(3) achieves natural resource conservation or reductions in the use of natural resources or energy consumption.

Section 48-56-60. Applications submitted for participation in the program must include a draft cooperative agreement that satisfies Section 48-56-30. An applicant must establish an interested persons group that includes residents of the area in which the facility proposed to be covered by the agreement is located and the application must include a description of the process used by the applicant to the group. The application must also include a list of members of the interested persons group, and any other interested person who has requested notification.

Section 48-56-70. (A) The department shall review each application submitted under Section 48-56-60. Upon completion of the review, the department shall decide whether to enter into negotiations with the applicant to finalize the cooperative agreement. If the application involves federal environmental law and regulations that the department is authorized to administer and enforce, the department shall consult with the U.S. Environmental Protection Agency to ensure that any action taken on the application is consistent with the department's federal program delegation, authorization, or approvals.

(B) Participation is at the discretion of the department, and any decision to reject an initial application or a draft cooperative agreement is not appealable under Section 1-23-310 of the Administrative Procedures Act or under Regulation 61-72 concerning procedures for contested cases.

(C) The department may terminate negotiations with an applicant concerning a draft cooperative agreement and the decision to terminate negotiations is not appealable under Section 1-23-310 of the Administrative Procedures Act or under Regulation 61-72 concerning procedures for contested cases.

(D) The department may not enter into an initial cooperative agreement after the first day of the 60th month beginning after the effective date of this act.

(E) At least six months before the expiration of the initial cooperative agreement, the participant shall notify the department of whether or not it wishes to renew the cooperative agreement. A cooperative agreement may be renewed one time for a period of up to five years. If the participant wishes to renew the cooperative agreement, it shall include with the notification any requests for changes to the initial agreement.

(F) If the participant or the department decides not to renew the cooperative agreement, the participant shall submit at least three months before the expiration of the initial cooperative agreement an

application for any approvals needed to replace the terms of the agreement and any information requested by the department. If the department does not issue the approvals before the expiration of the cooperative agreement, the agreement remains in effect until the approvals are issued by the department.

Section 48-56-80. (A) The department may amend a cooperative agreement with the consent of the participant or when there is a change in South Carolina environmental law.

(B) The department may revoke a cooperative agreement at the request of the participant.

(C) The department may, after an opportunity for a hearing, revoke a cooperative agreement if it finds that the participant:

- (1) is not in compliance with the cooperative agreement;
- (2) is not in compliance with an approval that is not replaced by the cooperative agreement or with a provision of South Carolina environmental law for which the cooperative agreement does not grant a variance;
- (3) has refused the department's request to amend the cooperative agreement;
- (4) is unable, or has shown an unwillingness, to comply with pollution reduction goals that apply to the participant under the cooperative agreement;
- (5) has entered into the cooperative agreement by misrepresenting or failing to fully disclose all relevant information or any information requested by the department.

(D) If the department revokes a cooperative agreement, it shall include in a written revocation decision:

- (1) deadlines that provide the participant with a reasonable amount of time to obtain required approvals that were replaced by the cooperative agreement;
- (2) any interim requirements that are needed to ensure that the participant is in compliance with all South Carolina environmental law applicable to the participant until the department issues the final approvals;
- (3) any requirements of the cooperative agreement for which the department does not establish interim requirements remains in effect until the department issues the final approvals.

(E) A final decision under subsection (C) is subject to review under Section 1-23-310 of the Administrative Procedures Act or under Regulation 61-72 concerning procedures for contested cases.

Section 48-56-90. (A) The department shall provide at least 30 days for public comment on the proposed issuance or revocation of a cooperative agreement and in other instances as the department deems appropriate.

(B) The department shall prepare a public notice of a proposed action under subsection(A) that:

(1) briefly describes the facility that is the subject of the proposed action;

(2) identifies the proposed action and states whether any variances would be granted under Section 48-56-50 by the proposed action;

(3) identifies an employee of the department and an employee of the applicant or participant who may be contacted for additional information about the proposed action;

(4) states that the draft of the proposed action is available upon request;

(5) states that comments concerning the proposed action may be submitted to the department during the comment period and states the last date of the comment period.

(C) Before the start of the public comment period, the department shall provide the public notice under subsection (B) to the applicant or participant, the federal Environmental Protection Agency, the members of the interested persons group established under Section 48-56-60 and all persons who have asked to receive notice of proposed actions under subsection (A). The department shall mail the public notice to any other person upon request. The department shall make a copy of the public notice available at the department's main office and at the environmental quality control district office where the facility subject to the proposed action is located. The applicant shall circulate the public notice in the area of the facility subject to the proposed action by posting the notice in public buildings, publishing the notice in local newspapers, and by any other approaches that the department determines are effective.

(D) The department shall hold a public informational forum on a proposed action if the comments received during the public comment period demonstrate considerable public interest in the proposed action.

Section 48-56-100. (A) A cooperative agreement has the same force and effect as any approvals identified as being replaced by the cooperative agreement. A provision of an approval that is identified under Section 48-56-20 as being replaced by the cooperative agreement is superseded by the cooperative agreement from the effective date of

the initial or renewed agreement until it is amended, revoked, or expired.

(B) Notwithstanding any other provision of this chapter, no agreement entered into by the department may allow a participant to cause an unauthorized release or discharge in violation of South Carolina environmental laws.

Section 48-56-110. A participant shall pay the same fees required under South Carolina environmental law that it would be required to pay if it had not entered into a cooperative agreement.

Section 48-56-120. (A) Reports submitted under a cooperative agreement fulfill the reporting requirements under South Carolina environmental law relating to the facility, activities, and pollutants that are covered by the cooperative agreement, except for any requirements for immediate reporting.

(B) A participant shall notify the department if it wishes to increase the amount of a discharge or emission or commence the discharge or emission of a pollutant from a covered facility that was not provided for in the cooperative agreement at the time it became effective. The notification shall describe any proposed facility expansion, production increases or process modifications that would result in the increased or new discharge or emission and shall state the identity and quantity of the pollutant planned to be emitted or discharged. If the increased or new discharge or emission is not authorized under the cooperative agreement, the department may amend the cooperative agreement or require the participant to obtain an approval if an approval is required under South Carolina environmental law.

Section 48-56-130. A participant shall submit a report to the department within 14 days after completion of a performance evaluation if the performance evaluation reveals violations at a facility covered by a cooperative agreement. The report shall contain a:

(1) description of the performance evaluation, including who conducted the performance evaluation, when it was completed, what activities and operations were examined and the results of the performance evaluation;

(2) description of any violations revealed by the performance evaluation;

(3) description of the actions the participant is taking or is proposing to take to diligently correct the violations within a reasonable period of time;

(4) proposed compliance schedule for correcting the violations;

(5) description of the measures that the participant has taken or will take to prevent future violations.

Section 48-56-140. (A) The department shall review the report, the actions, or proposed actions to correct the violations and the proposed compliance schedule. The department may:

(1) approve the actions and the compliance schedule as submitted;

(2) propose different actions or compliance schedule; or

(3) disapprove the proposed actions or compliance schedule.

(B) If the department and the participant do not reach an agreement on the actions to correct the violations or on a compliance schedule or the department disapproves the use of a compliance schedule, the department may initiate procedures to revoke the cooperative agreement and may commence an enforcement action.

(C) If the parties reach agreement, the department may amend the cooperative agreement to incorporate the actions to correct the violations and the compliance schedule.

(D) The department may consider these factors in determining whether to approve a compliance schedule:

(1) environmental and public health consequences of the violations;

(2) time needed to implement a change in raw materials or method of production if that change is an available alternative to other approaches for correcting the violations; and

(3) time needed to purchase any equipment or supplies that are needed to correct the violations.

Section 48-56-150. (A) If the participant diligently pursues compliance and corrects the violations that are disclosed in a report in accordance with Sections 48-56-130 and 48-56-140, the department may not commence an enforcement action for the violations.

(B) The department may not commence an enforcement action for violations covered by a compliance schedule that is approved under Section 48-56-140 during the period of the compliance schedule if the participant is not in violation of the schedule. If the participant violates the compliance schedule, the department may initiate procedures to revoke the cooperative agreement and may commence an enforcement action for the violations.

(C) Notwithstanding subsection (A), the department may at any time commence an enforcement action for violations if:

(1) significant environmental harm or a public health threat was caused by the violation;

(2) the department discovers the violations before submission of a report under Section 48-56-130;

(3) the department disapproves the compliance schedule or proposed actions under Section 48-56-140;

(4) the violation has resulted in a substantial economic benefit which gives the violator a clear economic advantage over its business competitors;

(5) the violation occurred within one year of a similar prior violation at the same facility;

(6) there is a violation of a judicial or administrative order against the facility; or

(7) the violation was committed intentionally, wilfully, or through criminal or gross negligence.

Section 48-56-160. (A) Except as provided in subsection (B), the department shall make any record, report, or other information obtained in the administration of this section available to the public pursuant to the South Carolina Freedom of Information Act.

(B) The department shall keep confidential any part of a record, report, or other information obtained in the administration of this section, other than emission data, discharge data, or information contained in a cooperative agreement, upon a showing satisfactory to the department by any person that the part of a record, report, or other information would, if made public, divulge a method or process that is entitled to protection as a trade secret, as defined in Section 30-4-40, of that person.

(C) If the department refuses to release information on the grounds that it is confidential under subsection (B) and a person challenges that refusal, the department shall inform the applicant or participant of that challenge. Unless the applicant or participant authorizes the department to release the information, the applicant or participant shall pay the reasonable costs incurred by this State to defend the refusal to release the information.

(D) Subsection (B) does not prevent the disclosure of any information to a representative of the department for the purpose of administering this chapter.”

Propane gas tank over-fill prevention devices not required

SECTION 2. Notwithstanding any regulations of the Department of Health and Environmental Control or any provisions of law to the contrary, over-fill prevention devices are not required for the refilling of existing noncommercial propane gas tanks.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 22nd day of May, 2002.

Became law without the signature of the Governor -- 5/29/02.
